

From theory to practice

**A case-based analysis of
the EU's 'do no significant
harm' principle**

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Executive summary

In 2021, the European Union (EU) introduced the ‘do no significant harm’ (DNSH) principle for EU funds, an environmental safeguard aimed at preventing investments from causing environmental harm. Through a series of case studies, this report analyses how the DNSH principle has been applied in various EU Member States, and assesses the extent to which the current application of the DNSH principle is delivering on its objective.

The DNSH principle was introduced in recognition of the need for a holistic approach to investment. However, although any initiative aimed at preventing investments in one sector from negatively impacting those in another should be welcomed, there is still much room for improvement. In theory, the DNSH principle holds promise for raising the ambitions of individual investments by considering their impacts across six environmental objectives, allowing projects to be adjusted for maximum positive impact. In practice, however, our collective experience indicates that the effectiveness of the DNSH principle ultimately depends on how managing authorities assess and apply it on the ground.

This report highlights considerable discrepancies between what is outlined during the initial funding stages of planning and assessment and how projects are actually implemented. This is particularly true for projects with low-quality assessments, which often lack evidence-based data, rely on unsubstantiated claims, and omit key details. It also applies to projects that are approved without a clear understanding of their potential impacts and locations.

We identified the following key issues in the national case-based examples:

- All potential project impacts are not assessed.
- Failure to prevent harm due to overly broad or superficial cohesion policy assessments.
- Lack of public access to environmental information, in breach of the Aarhus Convention.
- National authorities either fail to review or inadequately review assessments.
- Implementation checks are not conducted efficiently.
- Criteria applied are too weak.
- Assessments are not carried out independently or in a comprehensive manner.

The Joint Research Centre, the European Commission’s research and science service, has highlighted inconsistencies with the implementation of the DNSH principle across different funding programmes.¹ The principle is also still relatively new and open to interpretation, which has created confusion among managing authorities, undermining its effectiveness.

Despite these challenges, there are some positive aspects to note. For instance, the procedure for assessing the DNSH principle has provided an important means for civil society to raise concerns about problematic

¹ Manuel Beltran Miralles, Thomas Gourdon, Isabelle Seigneur, Maria Arranz Padilla, Nicolas Pickard Garcia, [The implementation of the ‘Do No Significant Harm’ principle in selected EU instruments: A comparative analysis](#), Joint Research Centre, 19 December 2023.

projects, enabling corrective and mitigating measures to be applied. In this way, the DNSH principle serves not only as an environmental safeguard, but also as a tool for increasing access to information and participation in environmental decision-making.

Future approaches must balance the flexibility needed to accommodate different national contexts with the need for concrete and ambitious measures that eliminate climate and environmental impacts. To this end, the European Commission must oversee and support the application of more rigorous and comprehensive rules. Without these improvements, the principle will continue to be largely ineffective at preventing environmental harm.

Introduction

The DNSH principle was introduced in 2021 to ensure that EU policies, programmes, and projects do not negatively impact the EU's climate and environmental objectives.

Despite extensive discussions and key publications² on the challenges of implementing the principle, misunderstandings and questions about its practical impacts persist. This report bridges this gap by analysing how the principle has been applied through a series of national case-based examples. Over three years on since the principle was first operationalised under the EU's Recovery and Resilience Facility, we still have very little information about how the principle is being applied in practice.

The European Commission, now in the process of issuing guidelines for the application of the principle to the Social Climate Fund, has confirmed it will be uniformly applied to all EU funds and programmes under the next Multiannual Financial Framework. Therefore, considering the growing number of funds set to apply the principle, gaining a better understanding of its current strengths and limitations has become increasingly important.

This report assesses the extent to which the current application of the DNSH principle is delivering on its objective to prevent climate-related and environmental harm. It identifies shortcomings, best practices, strengths, and weaknesses in current approaches to encourage a more robust application of the principle to upcoming funds.

The main focus of this report is on measures financed through the Recovery and Resilience Facility due to their advanced stage of implementation and their status as the highest perceived benchmark for application of the DNSH principle. Several examples from EU cohesion policy funds are also provided.

This report aims to ensure that, under the current rules adopted by existing EU funds, efforts are made to improve the quality of compliance with the DNSH principle and its application during the post-2027 funding period.

Additionally, it provides recommendations for the future use of the DNSH principle. Principal among them is that the Commission develops a balanced yet flexible approach, one that accommodates different national contexts, ensures a consistent level of application, and limits the administrative burden on EU Member States.

² See: Manuel Beltran Miralles, Thomas Gourdon, Isabelle Seigneur, Maria Arranz Padilla, Nicolas Pickard Garcia, [The implementation of the 'Do No Significant Harm' principle in selected EU instruments: A comparative analysis](#), Joint Research Centre, 19 December 2023 and Eduardo Medeiros, [A comparison between rural and urban areas](#), Cohesion for Transitions Community of Practice, 6 June 2024.

Background to the DNSH principle

The DNSH principle, as defined in Article 17 of the 2020 Taxonomy Regulation,³ is a safeguarding tool designed to screen and, where necessary, prevent economic activities from significantly harming the following six environmental objectives: climate change mitigation, climate change adaptation, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control, and the protection and restoration of biodiversity and ecosystems.

For an economic activity to receive financing, it must be demonstrated that it will do no harm to any of these six objectives. If this cannot be demonstrated, the activity cannot receive funding. Additionally, the tool is designed to screen for the highest environmentally performing investments, ensuring that only those with the least, or most positive, environmental impact receive financing. In this way, the DNSH principle also serves to raise the level of environmental ambition.

Application of the DNSH principle across different EU funds

The DNSH principle was first introduced and applied to the Recovery and Resilience Facility in 2021. Since then, it has been further developed and applied to several other funding streams, namely the cohesion policy funds and InvestEU. At the time of writing, the Commission is in the process of developing guidance for the Modernisation Fund and the Social Climate Fund, which will form the basis for a common, uniform guidance applicable to all EU funds for the post-2027 EU budget.

The DNSH principle is applied differently across various funds. As outlined in the 2021 Recovery and Resilience Facility Regulation,⁴ Member States must provide an assessment of the DNSH principle for each reform and investment included in their recovery and resilience plans. Additional technical guidance, issued in February 2021 and amended in October 2023,⁵ details how Member States should apply the DNSH principle and the necessary supporting evidence for compliance.

Member States are required to conduct either a simplified or substantive DNSH assessment, depending on the nature of the investment or reform. If a measure is marked as 100 per cent supporting an environmental objective, or there is no foreseen negative impact, then a simplified assessment can be undertaken. If a measure does not fulfil these criteria, a substantive assessment is needed, requiring substantial justification and evidence of compliance with each environmental objective. The Commission's guidance notice provides a list of different examples which Member States can use to justify claims that no significant harm will be done.

Under the cohesion policy funds, the DNSH principle is applied slightly differently. The principle only applies horizontally, requiring Member States to demonstrate DNSH compliance at 'the level of the definition of the types of actions'. They must then ensure that measures included in their operational programmes fall under

³ European Parliament, Council of the European Union, [Regulation \(EU\) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation \(EU\) 2019/2088](#), *EUR-Lex*, 23, 18 June 2020.

⁴ European Parliament, Council of the European Union, [Regulation \(EU\) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility](#), *EUR-Lex*, 12 February 2021.

⁵ European Commission, [Technical guidance on the application of "do no significant harm" under the Recovery and Resilience Facility Regulation](#), *Eur-Lex*, 11 October 2023.

these types of actions. In cases of double funding, where measures originally included under the Recovery and Resilience Facility receive supplemental financing via cohesion policy programmes, compliance with the DNSH assessment follows the decision taken under the Recovery and Resilience Facility. The complete rules are outlined in the Commission’s explanatory note on the application of the DNSH principle under the cohesion policy.⁶

Verification and monitoring mechanisms

The approaches under these funding streams differ in how they verify compliance with the DNSH principle. Under the Recovery and Resilience Facility, compliance is systematically verified through integration with the relevant milestones and targets of the measure. To receive the next tranche of financing, Member States must provide sufficient evidence, including supporting documentation, that the principle has been properly applied and integrated. This evidence is subsequently assessed by the European Commission upon request for further disbursements. If the Commission deems the evidence unsatisfactory, payments can be suspended until improvements are made.

Under cohesion policy, however, the verification mechanisms are less stringent. Only a simple justification is required to demonstrate that the types of actions are compliant with the DNSH principle. Furthermore, compliance is not assessed by the Commission at the time of approval. This means that the national managing authorities become responsible for overseeing, through national audits, how the principle is applied and integrated into the relevant call for proposals. National managing authorities can, but are not required to, introduce DNSH criteria at the project level through the call for proposals.

Development of DNSH guidelines and future implementation

As noted above, the Commission is currently developing new guidelines for applying the DNSH principle to the Social Climate Fund. In May 2024, a call for evidence was released, followed by a targeted consultation consisting of draft guidelines and sector-specific annexes. These annexes include exclusion lists for activities that are inherently not compliant with the DNSH principle as well as examples demonstrating evidence of compliance within certain sectors. It is understood that the future application of the DNSH principle will follow this approach, with sector annexes further developed to reduce the administrative burden on national authorities. This strategy is expected to form the basis for a single guidance rulebook applicable to all EU funds under the next Multiannual Financial Framework.

Although this is a positive step likely to increase the strength of the principle for the next funding period, attention must also be directed toward improving application of the DNSH principle during the current period under the cohesion policy and Recovery and Resilience Facility funds. The Recovery and Resilience Facility, in particular, requires all funds to be disbursed by the end of 2026, making the next two years crucial for ensuring proper implementation of the DNSH principle. With an increased number of projects now being implemented after lengthy delays, there is a pressing need to thoroughly assess how the DNSH principle is being applied.

⁶ European Commission, [Commission explanatory note: Application of the “do no significant harm” principle under cohesion policy](#), *European Commission*, 27 September 2021.

Key issues and main findings from national case-based studies

The application of the DNSH principle continues to be problematic in practice. This report identifies a wide range of issues based on monitoring specific measures and programmes financed by EU funds. The following section details these issues, supported by corresponding case studies.

The case studies, compiled from six EU Member States in central and eastern Europe, represent investments from both the Recovery and Resilience Facility and cohesion policy funds. They have been selected based on ongoing monitoring and their potential to contravene the objective of the DNSH principle, which is to mitigate or prevent environmental harm.

The case studies compare the original DNSH assessment submitted and reviewed by the Commission with its actual application during the implementation stage, including project selection and calls for proposals. Based on the key findings of these case studies, we highlight the current implementation challenges and assess whether the DNSH principle provided any additional value for preventing harmful investments.



Bulgaria: Road transport and infrastructure projects funded by the cohesion policy

Key findings:

- **DNSH assessments for Cohesion Policy too wide to prevent financing of problematic measures**
- **DNSH assessments done to a very low quality – they are too general to have real impact, full of contradictory statements and inconsistencies.**

Description of project

This case relates to the assessment of the DNSH principle under a specific priority under the Transport Connectivity programme in Bulgaria. As this programme is funded by cohesion policy, there is no obligation to carry a DNSH assessment for each measure under the programme, since the DNSH is a horizontal principle under the CPR regulation. The Member States must merely conduct a review of the DNSH for specific types of action within one programme (so a group of measures) and make sure this does not contradict the DNSH principle. Following this, all projects will be selected within this type of action will be presumed complying with the DNSH, although Member States are free to add a mechanism at project level for further scrutiny (e.g. specific selection criteria, detailed assessment per project).

Within the transport connectivity programme, one priority deals with the development of the road infrastructure along the core Trans-European Transport Network and road connections. This will finance key infrastructure projects in Bulgaria, and given their nature, have an obvious risk to do significant harm on the environment. NGOs were able to access a document prepared by the Bulgarian authorities assessing the compatibility of the types of measures to be financed under this priority with the DNSH principle.

Assessment of the DNSH principle for the priority projects on road infrastructure

The DNSH assessment was conducted by the relevant authorities, namely the ministries of transport and environment. It was not made public and consulted with interested parties, but was disclosed to Monitoring Committee upon request by one of its members. It allows to capture how the authorities were addressing the DNSH compliance for some of the projects.

First of all, the approach taken is flawed by the fact the assessment is mixing together both the overall priority and the various projects within the priority, instead of assessing the direct impact at project level or system level (as stated by the EC guideline).

On the content, the assessment is very vague and isn't backed with evidence or clear facts explaining the reasoning. For instance, the climate mitigation assessment states that the measure will lead to significant GHG emission reduction, 'as the development of the road infrastructure along the TEN-T network will remove bottlenecks and build missing links', hence having a 'positive effect on improving traffic and optimal speed of the vehicles as well as shorter journeys'.

No data complements this statement. Even worse, this contradicts the NECP 2030 that indicates that both passengers and cargo road transport will continue to increase their shares, and that the transport sector is in second place by CO₂ emissions share. To a big extent the emission increase is due exactly to the systematic prioritisation of the road network expansion and rehabilitation which attract more and more consumers to this most carbon intensive form of transport.

The second argument on the 'bottleneck removal' is also not correct as the currently approved options (Kresna gorge is planned for 90 km/h and Shipka tunnel for 80 km/h) will create the bottlenecks at the TEN-T corridors for the entire lifetime of the projects when realised.

The Shipka tunnel is proposed as part of 2 branches of the TEN-T network. An alternative road exists, through the rehabilitation of the Pass of the Republic by allowing an optimal use of capacities. But this alternative was not considered during the EIA procedure, even though it is at an altitude below the tunnel (meaning vehicles would emit less by driving to lower altitude). Moreover, the GHG emission during the construction of Shipka tunnel was not taken into account.

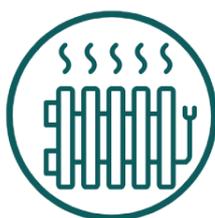
Next to the revision of the chosen option, the assessment does not consider mitigation measures for the overall transport projects, such as the decrease of traffic in the Kresna gorge via the modernisation of railway service or Zero emission public bus lines.

The assessment is also positive in regard of the biodiversity objective, even though the assessment is not based on the risk and potential of activities to harm the environment. Such risk includes the fact that both construction works are located in or near biodiversity sensitive areas. For all projects, AA and EIAs are not based on established conservation objectives. There are mitigation measures for Kresna Gorge, but the EC

rightly considers their effectiveness uncertain and thus not complying with the requirements of the Habitats directive.

Conclusions

Despite the inconsistency of the DNSH assessment, as well as the deficiencies of the EIA, the transport programme was approved by the EC without any change. In that way significant EU funds are reserved for projects that are proven to be potentially harmful on the climate, environment and biodiversity. Neither the EIA or the DNSH assessment were able to identify the problematic issues for the biodiversity protection, design and propose adequate mitigation measures, and fulfil their purpose to implement the basic principle of environment protection and application of the precautionary principle.



Czech Republic: Modernisation of district heating distribution systems

Key findings:

- **There is no check of the assessments by the national authorities**
- **There is no check of implementation until the project is built which is years from now**
- **The criteria are too weak and still allow fossil gas**
- **Assessments not public**

The Czech recovery and resilience plan contains a measure aimed at modernising heat distribution in district heating systems. The call for proposals opened in 2022 and closed in 2023. The scheme aims to modernise heat distribution in district heating systems. Part of the heat distribution system consists of relatively energy-inefficient steam pipes with relatively high heat losses. The aim of this investment is, therefore, to achieve savings in primary energy resources by modernising the heat distribution system (steam networks, hot water networks), including control systems, transfer stations, and pumping stations for the distribution of thermal energy. The possible extension of existing heat supply systems (HSS) can also be supported, but not the construction of completely new systems. The investments are therefore not directed at heat sources (for which there is the support from the Modernisation Fund).

DNSH intervention on paper

The call for proposals included specific conditions, in order to comply with the DNSH principle:

- There must be a reduction of at least 15 per cent in CO₂ emissions and at least 15 per cent in primary energy consumption compared to the baseline. To assess the benefits of the savings measures, the values for both monitored indicators must be clearly stated.
- The support for measures shall only be granted if they are part of ‘efficient district heating and cooling’ systems (within the meaning of Article 2(41) of Energy Efficient Directive (Directive 2012/27/EU), i.e. a district heating or cooling system that uses at least 50 per cent renewable energy, 50 per cent waste heat, 75 per cent heat from combined heat and power or 50 per cent from a combination of this energy and heat.
- Following the completion of the supporting works, the refurbishment works of the sources related to the production of electricity and/or heat must start and be completed by 2030 at the latest, so that they meet the requirements of the Technical Guidelines for the Application of the ‘no significant harm’ principle (2021/C58/01) and do not use solid fossil fuels as a heat source, except for fuels meeting the criteria for fossil gas-based heat production as set out in Annex III of the Technical Guidelines for the Application of the ‘no significant harm’ principle:
 - the measures relate to flexible and efficient gas-fired or combined gas-fired electricity generation with greenhouse gas emissions below 250 grams of carbon dioxide equivalent g CO₂e over the economic lifetime of the installation that will be viable in the future; or
 - the measures relate to flexible and efficient gas-fired electricity generation or gas-fired cogeneration that is adapted to the use of renewable and low-carbon gas and that is future-proof.

These criteria are in themselves far too weak to drive decarbonisation, as they allow fossil gas investments.

DNSH intervention in practice

Here, the DNSH directly impacted the conditions to which the support applies. In practice however, the control over the application of the DNSH criteria remains vague. Based on communication with the official at the Ministry of Industry responsible for the implementation of this particular component, each applicant had to complete a DNSH sheet when applying for funding.

In this document, the applicant had to declare that the activities related to the relevant measures in the recovery and resilience plan application comply with the DNSH principle under the Recovery and Resilience Facility for the three items listed in the section above. In addition, the applicant had to demonstrate whether and how the implementation of the measure would not significantly harm the environmental objectives.

The responsibility therefore rests solely on the shoulders of the applicants and it is assumed that if it has been stated that the applicant meets the DNSH criteria, this is true. At the moment of the decision to award the grant, this information on the fulfilment of the DNSH criteria is no longer relevant, as no further evaluation takes place.

An ex-post check is planned to ensure that applicants who have received funding have declared the correct information, as it is currently up to the individual applicant to declare that they actually meet the DNSH

criteria. The guarantee lies with the applicant. It is understood that if any of the criteria have not been met, the winning projects will have to repay the funds that have been reimbursed. Which, in the case of the condition relating to the timing of works in the context of the refurbishment works of the sources related to the production of electricity and/or heat, can only be assessed after 2030.

For this reason, there is currently no overall summary of DNSH assessments, even though the call closed at the end of 2023. This is because it was not evaluated – it is simply assumed that all projects that received funding automatically meet these DNSH criteria.

In terms of transparency and making these assessments publicly available, according to the authorities, it is not possible to publish them in their entirety as these forms contain business secrets of individual companies, so a large part of the text would have to be redacted. There is therefore no provision for any form of public disclosure.

Conclusions

The criteria are too weak for district heating as they allow fossil gas investments under certain circumstances. In the case of the Czech Republic, there is no comprehensive assessment even of these weak DNSH criteria before the grant is awarded. It is the responsibility of the applicants to assess whether they meet the DNSH criteria or not, and the national authorities do not critically assess this. Nor are there other checks foreseen before project implementation. If they provide incorrect information in the application or fail to meet the work plan, they will be penalised in the form of repayment of the grant. However, this is an ex-post evaluation and is not part of the selection process. As such, it is unclear what additional impact the DNSH has on a concrete project, and this will only be known once the project is implemented in several years' time.



Estonia: Rail Baltica

Key findings:

- **The DNSH assessments did not always consider the direct impacts of the entire project.**
- **The broader, cumulative impacts of potential environmental damage were not adequately assessed.**

Description of the project

Rail Baltica is a major infrastructure project involving the constructing of a modern railway network, spanning 870 kilometres, connecting Estonia, Latvia, and Lithuania to the wider European transportation system. The project, currently under construction, has faced numerous challenges, including limited resources, escalating costs, and constant delays. However, it has garnered strong support from national governments and the EU, promising to reshape transportation infrastructure in the Baltic region for years to come.

Unfortunately, despite the general environmental benefits of rail travel, the current route selection is set to have lasting ecological consequences for the Baltic region. These include habitat loss, fragmentation, disturbances, and direct species mortality.

The project has received partial funding of EUR 31.05 million from the Recovery and Resilience Facility, specifically allocated for the construction of several viaducts along the Rail Baltica route. In compliance with the fund's criteria, an assessment was conducted to ensure that the investment would not cause significant environmental harm. Approval was granted under the condition that measures would be taken to mitigate any adverse effects on the local environment.

An environmental impact assessment conducted during the planning phase found no significant immediate impacts on protected natural areas. However, the assessment used a 'salami-slicing' approach, where the environmental impacts of smaller sections of the project were evaluated in isolation. As a result, the broader cumulative impact of the investment on Estonian ecosystems and habitat connectivity was not assessed.

DNSH intervention on paper

The DNSH assessment of the Rail Baltica viaducts was carried out by environmental experts from the independent consulting firms, Hendrikson and Civitta, both experienced in performing strategic

environmental assessments and environmental impact assessments. The assessment, accessible via the website of Estonia's managing authority for structural funds, indicates no vested interests between the consultancy and the project developers and can therefore be considered independent.

However, to our knowledge, the DNSH assessment was not open to public comments, and no public consultations were held. Although the Commission reviewed the DNSH assessment as part of the amended recovery and resilience plan approval process, it did not provide feedback to Estonia's managing authorities.⁷

The assessment followed the DNSH checklist outlined in Annex I of the Commission's technical guidance notice.⁸ The consultants filtered each of the six environmental objectives to determine those requiring a substantive assessment, providing brief justifications for objectives not requiring a substantive assessment according to the instructions outlined in Step 1 of the notice.⁹

For each measure, environmental objectives requiring a substantive assessment were provided, as stipulated in Part 2 of the DNSH checklist.¹⁰ In the case of the Rail Baltica viaduct investment, four of the six environmental objectives – sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control, and the protection and restoration of biodiversity and ecosystems – required a substantive assessment.

DNSH implementation in practice

Although the assessment makes a commendable effort to assess the impacts of the construction of the viaducts in accordance with the Commission guidance, it fails to address the impacts of the entire Rail Baltica project on nature and biodiversity, including its indirect impacts. While two assessments were carried out with a view to understanding the socio-economic and natural impacts of the construction,¹¹ maintenance, and operation of the project,¹² neither of them investigated the 'significant harm' component in the depth outlined in the Commission's DNSH guidance.

This discrepancy creates a paradox: While the viaducts, a specific section of Rail Baltica, are deemed not significantly harmful, the same conclusion cannot be drawn for the entire project of which they are a part. Constructing a new railway track instead of utilising existing infrastructure will effectively bisect Estonia, fragmenting numerous habitats and triggering a sudden surge in the demand for construction materials.

It is alarming that the DNSH assessment deems the anticipated impact on biodiversity and habitat quality as significant only in the short term, despite the lasting effects of deforestation. Clear-cutting a forest in

⁷ Information based on a direct email conversation with a government official.

⁸ European Commission, [Technical guidance on the application of 'do no significant harm' under the Recovery and Resilience Facility Regulation](#), *EUR-Lex*, 11, 12, 11 October 2023.

⁹ *Ibid.*, 8, 9.

¹⁰ *Ibid.*, 11, 12.

¹¹ Hendrikson & Ko, [Olemasoleva raudtee koridori kasutamise võimalikkus Rail Balticu raudtee trassi asukohana](#), *Hendrikson & Ko*, 23 September 2013.

¹² Rail Baltica, Hendrikson & Ko, [Study on climate change impact assessment for the design, construction, maintenance and operation of Rail Baltica railway](#), *Rail Baltica, Hendrikson & Ko*, 15 February 2019.

order to use the land for another purpose clearly has long-term consequences for biodiversity. The project requires the deforestation of 860 hectares in the coming years. This impact is so significant that, coupled with the deforestation plans for military purposes, it is likely to prevent Estonia from meeting its land use, land-use change, and forestry goals.¹³

In addition to overlooking the direct impacts of the viaducts, the insufficient assessment of the indirect impacts is also concerning. The DNSH assessment of the viaducts needs to account for the entire life cycle of the activities triggered by the project. While some elements of life cycle analysis appear in the assessment, its focus is predominantly local, centred on the construction and operational phases, especially within the viaduct construction zones, where railway traffic poses no risk to surface or groundwater pollution.

However, the evaluation of the indirect effects and mitigation measures lacks detail. For instance, although the consideration of habitat loss due to the sourcing, transportation, and storage of construction materials is acknowledged, the assessment fails to adequately explain how this consideration will translate into concrete actions. The scope of the assessment should be broadened to encompass all phases – production, use, and end-of-life – where the most significant harm is likely to occur.

One significant indirect impact of the Rail Baltica project is the added pressure to mine construction materials and open new quarries. Although the DNSH assessment points out that crushed stone produced from already deposited oil shale tailings can be used as filling material, it overlooks the additional demands Rail Baltica creates. For instance, the construction of the Rail Baltica railway track will significantly increase the demand for construction minerals, adding over 2.3 million cubic metres annually between 2023 and 2028 compared to 2021 levels.¹⁴ This surge in demand will place additional pressure on ecosystems and biodiversity.

Adding to these concerns, the recent developments in Pärnu County have exposed a critical flaw in the environmental mitigation strategies employed for the Rail Baltica project. In March 2024, it came to light that over 63 hectares of forest designated as a habitat for the western capercaillie, a protected bird species, had been clear-cut.^{15, 16} Ironically, this area was intended as a compensation zone to offset the environmental impacts of the construction of the railway.

In a situations like this, the European Commission should take steps to ensure that damages incurred do not come at the expense of the taxpayer. Such incidents also highlight significant issues in the management of compensation measures and raise serious concerns about their effectiveness in preventing environmental harm.

Conclusion

The DNSH assessment evaluates the construction impacts of the Rail Baltica viaducts according to the Commission's guidance but inadequately considers the indirect impacts and the overall direct effects of the

¹³ Johannes Voltri, [Kliimaeesmärgi täitmiseks peaks peatama metsaraie ja Nursipalu arendamise](#), *ERR.ee*, 30 April 2024.

¹⁴ Loora-Elisabet Lomp, [Riigikontroll: uute karjäärideta jäävad maanteed ja Rail Baltic ehitamata](#), *Postimees*, 30 November 2022.

¹⁵ Aivar Pau, [Suur looduskahju Pärnumaal. RMK korraldas keskkonnaameti loal ulatuslikke lageraieid metsise kaitsealadel](#), *Forte*, 5 March 2024.

¹⁶ Carmen Kilvits, Farištamo Eller, [Clearcutting chaos: A bumpy ride for Estonia's conservation areas](#), *CEE Bankwatch Network*, 15 April 2024.

project as a whole on nature and biodiversity. Consequently, the viaduct investment was deemed not significantly harmful, a conclusion that does not extend to the entire project. Considering the increased environmental pressures that the project has directly and indirectly applied, it is imperative to consistently apply a precautionary approach whenever there is uncertainty regarding whether EU funding might lead to environmental degradation, directly or indirectly. To ensure the DNSH principle is effectively applied, a mechanism is required to ensure that a DNSH assessment is carried out in the context of the entire project, rather than in isolation.



Hungary: Geothermal energy scheme supported by the Recovery and Resilience Facility

Key findings:

- **DNSH is fully included in the measure with clear requirements to be checked. However, this is likely not strong enough and lacking in detail to prevent potential harm.**
- **DNSH assessment is not public**

Context and description of the project

Under the Recovery and Resilience Facility, the Hungarian government has invested in establishing a financial instrument to support the exploration and exploitation of geothermal energy. Like any other RRF investment, a DNSH assessment had to be prepared. Geothermal investments can make a useful contribution to a decarbonised heat system as long as emissions of harmful gases such as methane are captured, the water reinjected into the ground to avoid subsidence, and measures taken to avoid pollution of groundwater with mud and anti-corrosion chemicals.

DNSH intervention on paper

The DNSH assessment is included in the investment strategy of the RRF investment ‘Establishing a financial instrument to support the exploration and exploitation of geothermal energy’. From the document, it is not apparent who prepared the DNSH assessment. At this stage, the DNSH assessment could serve as a guide for the preparation of the call for proposal and the assessment of project proposals.

The key objective of the investment is geothermal drilling and the installation of facilities necessary to utilise geothermal heat, thus it is considered to contribute to the mitigation of climate change considerably. As auxiliary activities, the investment also includes connection to the electricity or heat grid and potential

support for the extraction, treatment and use of the accompanying elements of geothermal drilling (eg. CO₂, CH₄, etc.).

The DNSH assessment notes that methane emissions should be avoided or reduced to a minimum, and that this should be ensured by a detailed assessment according to the Technical guidance on the climate proofing of infrastructure in the period 2021–2027 (2021/C 373/01).

According to Part 1 of the assessment (checklist), a substantive assessment according to Part 2 is only needed in relation to ‘The sustainable use and protection of water and marine resources’, ‘The circular economy, including waste prevention and recycling’ and ‘The protection and restoration of biodiversity and ecosystems’. The section about ‘Pollution prevention and control to air, water or land’ only discusses impacts on air pollution which are considered to be minor (limited to dust pollution caused during construction works). It fails to mention water pollution aspects, while in the case of geothermal drilling, these cannot be ignored, due to potential contamination by toxic substances contained in geothermal water. Studies¹⁷ and evidence¹⁸ underline that, even if the risk of groundwater pollution (and that of drinking water) can be limited by appropriate technologies, this is a factor that has to be subject to assessment and careful project planning and implementation.

The substantive assessment according to Part 2, notes in relation to ‘The sustainable use and protection of water and marine resources’ that, only projects where the bulk of extracted water is re-injected to the source layer, can be supported, unless there are technical or geological obstacles to this. This latter clause may be too relaxing for project promoters and needs close scrutiny during project selection, implementation and monitoring.

The assessment of ‘the protection and restoration of biodiversity and ecosystems’ is rather weak regarding the use of protected areas: It notes that investments should in principle be avoided in protected or sensitive areas but does not preclude investments in such areas. It merely notes that, if such areas were affected, appropriate assessments, and should be carried out and mitigating measures should be taken.

At the project level, applicants are required to fill in the DNSH questionnaire for which a guide is provided based on the Commission's Guidance.¹⁹

DNSH intervention in practice

The DNSH assessment of the RRP measures is not public at all. The RRP itself only contains a brief (1-4 paragraphs) summary of DNSH assessment for each component of the RRP (ie. not for each measure even); it seems to be rather superficial. It is not known who prepared the DNSH assessments.

At the latest meeting of the Monitoring Committee of the RRP (11 April 2024), NGOs asked for the DNSH assessment of each measure to be made publicly available. The officials responded that they are not sure if

¹⁷ Manuel Valer Herlo, [Environmental impact of the construction and operation of geothermal water wells on groundwater](#), *Research Gate*, April 2020.

¹⁸ Netherlands Court of Audit, [Drinking water aquifers inadequately protected against geothermal risks](#), *Netherlands Court of Audit*, 17 June 2021.

¹⁹ [Technikai iránymutatás a Helyreállítási és Ellenállóképességi Terv keretében benyújtott pályázatokhoz csatolt DNSH értékelés elkészítéséhez.](#)

they could publish it because those are ‘pre-decision’ (preparatory) documents, but they would ask the European Commission and if there is no objection from the EC's side, they could publish it. As the RRP measures’ DNSH assessments are not public, and the Managing Authority was reluctant to provide them, NGOs asked the Commission representatives if these assessments could indeed be withheld. The response was that it was up to the Managing Authority to decide.

There is no public information about how DNSH is being applied to the call for proposals under the RRP. These are generally not public, and not even provided to the Monitoring Committee. Recent information obtained via the Monitoring Committee revealed that for measures implemented via financial instruments (financial intermediaries such as the Hungarian Development Bank MFB), there is a document called the ‘investment strategy’ prepared and adopted by a so-called ‘Professional/Expert Management Committee’ (the composition of which is not known), based on which the call for proposal is drafted and published for consultation. NGOs requested that these investment strategies be shared with the Monitoring Committee before adoption by this ‘Management Committee’ which the government officials considered problematic. Some adopted investment strategies were shared with the Monitoring Committee recently, which contained a brief DNSH assessment of the measure. For regular calls for proposals not involving financial intermediaries, no DNSH assessment has been seen.



Latvia: Flood risk mitigation investments under the national recovery and resilience plan

Key finding:

- **Independent DNSH assessments and monitoring is needed to ensure more accurate assessments are conducted backed by evidence**

Description of the project

The investment ‘1.3.1.2.i. Investments in flood risk reduction infrastructure’ originally included renovation of regulated sections of slow-flowing rivers, polder pump stations and the renovation of protective dams. The overall goal of this investment is to adapt to climate change by decreasing the possibility of flooding. According to Latvia’s recovery and resilience plan,²⁰ this measure costs EUR 32.967 million and, according to earlier versions of the plan, was planned to protect 59,000 hectares of land against flooding.

²⁰ Ministry of Finance of the Republic of Latvia, [Latvia’s recovery and resilience plan, Annex 2: Costs and Funding](#), Ministry of Finance of the Republic of Latvia, accessed 15 April 2023.

The investment's aim is understandable, since it is predicted that climate change will greatly increase flood risks in the future. Projections show that, under the worst climate change scenarios, the financial losses caused by floods in the European Union may increase by almost six times, and the number of people whose homes will be affected by floods could triple, reaching half a million people each year.²¹

However, multiple discussions and some dispute took place throughout the development of this investment between the implementor, the state-owned Ministry of Agriculture, Real Estate, environmental non-governmental organisations and European Commission. The main objections by the environmental non-governmental organisations were that some of the flood risk mitigation activities, especially the renovation of regulated sections of slow-flowing rivers were potentially harmful to the ecological state of EU-protected habitats – riverine micro habitats important for a variety of species and wetland habitats that surround the some of the regulated rivers.

First objections were raised by environmental organisations through the Environmental Consultancy Board²² because of high risks to biodiversity (mostly wetlands) in Natura 2000 areas. These objections were heard by the implementor, and the riskiest projects were removed from the investment in the early stages of the original RRP development. However, in the amendments of Latvia's RRP, that were submitted together with the REPowerEU chapter, new projects were added, including a potentially problematic one – renovation of the Bolupe river drainage channel. Later, this project was removed again due to environmental concerns (questions raised by both environmental NGOs and EC) and most likely also the lack of time left to carry out the project due to uncertainties about environmental requirements set by the controlling institutions in Latvia. A virtual tour produced by Bankwatch and Green Liberty tells the story of Bolupe and the need to improve existing flood risk mitigation practices in Latvia.²³

The original list of 29 objects, which was attached to Latvia's recovery and resilience plan, consisted of nine pumping stations, 15 protective dams and the renovation of the regulation of five slow-flowing rivers. However, after all the changes, the renovation will now happen in 21 infrastructure objects, which, according to investors, will diminish flood risks on 15,363 hectares of land by 2026.²⁴ The list is now excluding all the slow flowing rivers and focusing almost solely on restoration of pumping stations and protective dams. From the point of view of DNSH assessment, this has resulted in less risk of negative impact on nature and biodiversity, as only existing pump stations and protective dams would be restored.

DNSH intervention on paper

On paper the DNSH assessments were highly ambitious and reassuring, given the complicated nature of this investment and its possible negative impacts on nature and biodiversity. The performers of the assessment relied on the existing legislative measures (EIA and other assessment procedures) to mitigate

²¹ EU Joint Research Centre, [Facing increasing river flood risk in Europe: adaptation measures can save lives and billions of euro](#), *EU Science Hub*, 6 February 2023.

²² Environmental Consultancy Board, [A committee of elected NGOs operating as consultative structure regarding environmental issues in Latvia](#), *Ministry of Environmental Protection and Regional Development*, accessed 24 June 2024.

²³ Green Liberty, [Upēm jādod telpa/Give rivers space](#), *YouTube*, 28 November 2023.

²⁴ Cabinet of Ministers of Latvia, [Par Latvijas Atveseļošanas un noturības mehānisma plāna papildinājumu](#), *likumi.lv*, 23 September 2023.

the negative impacts in individual projects as well as on the integration of ‘green infrastructure’ elements, such as sedimentation pools and artificial wetlands.

A summative DNSH assessment for the flood risk mitigation investment as a whole was attached to the first version of Latvia’s Recovery plan,²⁵ it was also later updated with individual assessments for the three categories of projects – restoration of pump stations, protective dams and renovation of slow-flowing rivers.²⁶ It foresaw no negative impact towards sustainable use and protection of waters, it argued that:

- The actions would reduce leakage of pollutive substances into surface waters and groundwaters,
- The restoration of sedimentation pools before the pump stations would improve their capacity to capture nutrients, soil and organic matter from reaching the waterbodies and thus improve their ecological condition,
- Removal of fallen trees and excess debris would improve the ecological quality of the waterbodies, by reducing bank erosion, increasing oxygen levels and biodiversity,
- An environmental impact assessment would be carried out for the planned activities if required by the national legislation.

With regards to biodiversity, the assessment stated that the measure would have no negative impact on biodiversity and ecosystems, since:

- Priority would be given to green infrastructure solutions or infrastructure integrating nature based solutions,
- Any disturbance to species or habitats, both during construction and operation, would be avoided through necessary prevention and mitigation measures,
- An environmental impact assessment would be carried out for the planned activities if required by the national legislation.

Individual DNSH assessments were also performed for every project included in the investment, for both – the original version of the plan²⁷ and the amendment,²⁸ however these were mostly repeating the promises given in the summative assessments for the investment as a whole.

In the annexed verification mechanism table for the operational agreement of the RRF between European Commission and Latvia²⁹ it was also emphasised that as proof of compliance with the DNSH, ‘appropriate assessments’ as referred to the article in 6(3) of the Habitats Directive would be included in order to assess

²⁵ Ministry of Finance of Latvia, [1.pielikums Latvijas Atveseļošanas un noturības mehānisma plānam – principa “Nenodarīt būtisku kaitējumu” novērtējums](#), *esfondi.lv*, 18 May 2021.

²⁶ Ministry of Finance of Latvia, [1. Pielikums Latvijas Atveseļošanās un noturības mehānisma plāna papildinājumam – principa “Nenodarīt būtisku kaitējumu novērtējums](#), *esfondi.lv*, 15 November 2023.

²⁷ Ministry of Finance, Latvia, [1.pielikums Latvijas Atveseļošanas un noturības mehānisma plānam – principa “Nenodarīt būtisku kaitējumu” novērtējuma pielikums 1.3.1.2.i](#), *esfondi.lv*, 18 May 2021.

²⁸ Cabinet of Ministers of Latvia, [Par Latvijas Atveseļošanas un noturības mehānisma plāna papildinājumu](#), *likumi.lv*, 23 September 2023.

²⁹ Ministry of Finance of Latvia, European Commission, [Recovery and Resilience Facility Operational arrangements between the European Commission and Latvia](#), *vestnesis.lv*, 16 February 2022.

the impacts of the proposed measures on protected species and habitats and that these assessments should be carried out for all projects located in or near biodiversity-sensitive areas (mostly meaning Natura 2000 areas) and not cause net-deterioration in the status of water bodies, in conformity with Article 4.7 of the Water Framework Directive.

DNSH implementation in practice

The DNSH assessment, conducted by the Ministry of Agriculture, cannot be considered independent since the beneficiary of the investment is a state-owned enterprise. The assessment failed to realistically capture and address the potentially nature damaging aspects of the currently predominant drainage practices in Latvia, especially when it comes to renovation of regulated rivers.

- In many cases, these rivers, channelled 60 to 70 years ago, have started to regain their natural structures and elements, such as meanders and micro-habitats for various species.
- In most cases, renovation of the channelled river involves restoring the parameters of the originally dug channel – this happens by completely re-digging the river, which in most cases destroys various micro-habitats which have formed since the first channelling. Since the drainage regulations foresee it and it makes it easier to access the river, an oft-used practice is the cutting down of trees and other vegetation on the banks of the river despite the fact that moderate tree shading is known to improve river water quality by reducing river overgrowth with algae and aquatic plants, as well as securing banks against erosion.³⁰ According to the experience by environmental non-governmental organisations, these actions often lead to accelerated overgrowth and poor water quality, although currently systematic monitoring data is lacking to prove this assumption.³¹
- Some form of green infrastructure elements are almost always introduced in these projects, however the scale is insufficient – one sedimentation basin or an artificial wetland at the end of the renovated river section is unlikely to outweigh the damage caused by harvesting trees and re-digging the river bed to practically a canal-like or ditch-like state throughout the entire (sometimes several tens of kilometres long) section of the regulated river.
- Hydrological regimes of the adjacent floodplain habitats of EU importance are not always respected and in many cases the renovation actions do not take into account the recommendations to restore the connectivity between the river and its floodplains, which is often included in the River Basin Management Plans for the particular rivers.³²

The risks of non-compliance of the DNSH led to multiple changes and unnecessary disputes between the investor, environmental non-governmental organisations and the European Commission. Removal of the slow-flowing river projects did also remove most of the biodiversity risks from this particular investment, but unfortunately, it also meant that flood risk issues in these locations were not addressed. Although appropriate assessments and environmental impact assessments were promised in the DNSH assessment

³⁰ Geo IT, [Ūdenstilpju un ūdensteču ilgtspējīgas apsaimniekošanas un saglabāšanas vadlīnijas](#), *ezeruzeme.lv*, accessed 24 June 2024.

³¹ Green Liberty, [How far are we from sustainable flood risk mitigation practices?](#) *Green Liberty*, 28 March 2023.

³² Ministry of Environmental Protection and Regional Development of Latvia, [River basing management plans](#), *Ministry of Environmental Protection and Regional Development of Latvia*, 22 March 2020.

and operational agreement, if and where the legislation would require them, our understanding is that these cases were avoided by the implementor as much as possible out of fear of not being able to meet deadlines, at least in the case of regulated rivers. If there was evidence that a regulated river renovation project would require deeper assessments, it most likely led to the project being removed from the Recovery and Resilience funding altogether.

Meanwhile, the overarching problem of outdated renovation practices continues to persist in other EU funds and national funding. Admittedly, the use of various green infrastructure elements in EU funded drainage channel renovation projects is slowly growing. However, to improve the situation, a change of approach is needed towards giving rivers more space.

The need to restore natural wetland and riverine ecosystems is supported in the EU Water Framework Directive.³³ The Floods Directive³⁴ also emphasises that flood risk management plans should give rivers more space and consider where possible the maintenance and/or restoration of floodplains. A recent study from the EU Joint Research Centre published in the scientific journal *Nature*³⁵ concludes that reducing flood peaks using detention basins, such as alluvial meadows and forests, peatlands and other wetlands, is economically one of the most attractive options. However, this requires changing prevailing practices, particularly in relation to legislation, which ministries and stakeholders would need to address jointly and with the support of the owners and maintainers of these natural resources.

Conclusions

Flood risk mitigation measures are important for the quality of life, health and safety of local communities. However, if the wrong solutions are chosen, they can also be harmful to nature and the environment. The negative effects can be mitigated, and the projects indeed can even be positive for nature, if they are created with careful consideration, modelling and with proper environmental impact assessments.

If the DNSH assessments of this flood risk mitigation investment had been done independently and objectively included more nuanced risk evaluations, then timely environmental assessment procedures at the project level could have been performed and the best possible solutions chosen.

The claims in the DNSH assessments with regards to the positive impacts on biodiversity, water quality and environment are not backed by evidence, since currently there is no monitoring or verification methodology in place that would assess the environmental impacts of the regulated river renovation projects, which is urgently needed to improve the existing drainage practices and check the claims made in the DNSH assessments.

³³ European Parliament, Council of the European Union, [Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy. Article 1](#), *EUR-Lex*, 20 November 2014.

³⁴ European Parliament, Council of the European Union, [Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks \(Text with EEA relevance\)](#). Article 14, *EUR-Lex*, 23 October 2007.

³⁵ EU Joint Research Centre, [Facing increasing river flood risk in Europe: adaptation measures can save lives and billions of euro](#), *European Commission*, 6 February 2023.



Poland: Water management project in Eastern Wielkopolska

Key findings:

- **Overall, DNSH assessment guidelines under the cohesion policy, despite serving as a useful tool for civil society to raise concerns, are not stringent enough to prevent problematic measures from being financed.**
- **The DNSH assessment of the Wielkopolska regional programme was poorly carried out, too general to have tangible impacts, and marred by contradictory statements and inconsistencies.**
- **The DNSH assessment was also used to justify concerns over deficiencies in the prior strategic environmental assessment.**

Description of the project

In 2022, Wody Polskie, the state water holding responsible for managing Poland's water resources, announced a project aimed at increasing water retention and restoring water resources in post-mining areas in Eastern Wielkopolska. The PLN 120 million project, supported by Polish mining company ZE PAK, is expected to be completed by 2029. It is being co-financed by the Just Transition Fund as part of the 2021–2027 European Funds for Wielkopolska programme.

A critical sticking point is how the investment is being categorised. The promoters are framing the investment as a 'strategic project', when it should be categorised as a 'programme'. In effect, the investment consists of 25 separate, yet interconnected, projects. This is an important distinction, as dividing the project into smaller sections allows the project promoter to bypass the requirement to conduct a strategic environmental assessment, which would factor in the wider social, environmental and economic impacts of the project. This shortcoming poses a significant risk likely to ultimately result in harm than good.

Eastern Wielkopolska faces a critical need to repair the environmental damage wrought by decades of lignite mining. The promoters of the project plan to draw water from the Warta River with the aim of flooding the opencast pits and stabilising groundwater levels. These are important steps in redressing this damage.

However, Wody Polskie planning documents indicate that water will be extracted from the river even during periods of low flow, which are recorded for two-thirds of the year in the Konin area. Depleting water from the river in this manner not only poses a risk to protected species and habitats, but could also lead to water shortages for waterworks that depend on river water.

DNSH intervention on paper

The project is co-financed by the Just Transition Fund, which means that it falls under the cohesion policy's DNSH framework. The Commission's explanatory note³⁶ states that compliance with the DNSH principle is assessed at the level of programmes and at the level of the definition of the types of actions.

The DNSH assessment³⁷ for the whole just transition chapter is only four pages long and does not identify any DNSH-related risks related to this project. Although an explanation is provided for the Taxonomy Article 9 (c) objective the sustainable use and protection of water and marine resources, it lacks an in-depth analysis. It merely states that in order to eliminate the negative effects of long-lasting mining activities, which contribute, among other things, to the disruption of water relations, measures will be implemented to restore and increase water resources in the subregion, e.g. in the form of protection and restoration of natural water retention ecosystems, as well as investments in water facilities and infrastructure also outside the subregion. Risks related to drawing river water have not been indicated.

The Territorial Just Transition Plan itself only indicates that measures implemented under this document will comply with an idea of climate change mitigation in line with the DNSH concept in order to move towards climate neutrality.³⁸ However, the Commission's explanatory note details the rules on compliance with the DNSH principle during programme implementation:

To respect the provisions of Article 9 CPR, namely that the objectives of the Funds shall be pursued in line with the DNSH principle, Member States are responsible for the implementation of this principle throughout the programming period. No obligation is laid down in the cohesion policy Regulations requiring a case by case assessment of compliance of each operation with the DNSH principle per se, but rather that operations fall within the types of actions which have been assessed as DNSH compliant within the programmes. Member States must therefore (i) put in place selection procedures that are sufficiently detailed to ensure compatibility of operations with DNSH compliant types of actions set out in approved programmes and (ii) are compatible with applicable EU environmental law.³⁹

This is a clear indication that certain measure, such as thorough selection criteria and a strategic environmental assessment should have been provided for the Eastern Wielkopolska hydrological project.

DNSH implementation in practice

For clarity's sake, we will start with a short summary indicating what analyses of environmental impacts were done and which were not, and this will be discussed in more detail below.

³⁶ European Commission, [Commission explanatory note: Application of the “do no significant harm” principle under cohesion policy](#), *European Commission*, 27 September 2021.

³⁷ Marshal Office of the Wielkopolska Region, [Ocena DNSH dla programu Fundusze Europejskie dla Wielkopolski 2021-2027 \(wersja 4.0\)](#), *Marshal Office of the Wielkopolska Region*, 104–108, 2022.

³⁸ Wielkopolska Region Marshall Office, [Terytorialny Plan Sprawiedliwej Transformacji Wielkopolski Wschodniej](#), *Wielkopolska Region Marshall Office*, 16, December 2022.

³⁹ European Commission, [Commission explanatory note: Application of the “do no significant harm” principle under cohesion policy](#), *European Commission*, 4, 27 September 2021.

1. A DNSH analysis of the Wielkopolska regional programme was conducted in 2022.⁴⁰
2. A strategic environmental assessment of the Wielkopolska regional programme was published on 29 September 2021.⁴¹
3. No strategic environmental assessment or DNSH assessment was conducted for the hydrological project itself.

The DNSH analysis of the Wielkopolska regional programme was prepared in-house by the Wielkopolska Regional Marshall's Office with the cooperation and under the supervision of the Spatial Planning Office of the Wielkopolska Voivodship. This is different from national level programmes or the recovery plans, where DNSH analyses were outsourced to a private company. In both cases, the independence of these documents is questionable either prepared in-house or by an external provider, but paid by the entity whose work is being assessed.

To the best of our knowledge, no detailed description of the project has been officially submitted so far to the managing authorities and thus it was not available at the time of the DNSH analysis completion. The only information officially available was a very general project fiche from 2021. The MA asked for an updated project fiche in early 2023, but none was available last year, so the project selection criteria for the project was voted in mid-2023 based on an outdated project fiche. The strategic environmental assessment of the regional programme indicates that no details were available also at that time, just a general description – this SEA however was completed earlier than the DNSH assessment September 2021 vs unspecified time in 2022.

It should also be noted that a systemic issue in Poland is the very low quality of DNSH assessments – they are too general to have real impact, full of contradictory statements and inconsistencies.

An expert analysis conducted in February 2024 of available documentation on the project none of which was officially submitted to the managing authorities,⁴² DNSH compliance should have been provided by a thorough analysis of the impact of the entire project with its ca. 25 sub-elements on waters and on achieving ecological objectives as outlined in art. 17 of the EU Taxonomy.

There is no indication on the regional programme's website summarising consultations programme itself and its SEA called a prognosis for environmental impact were consulted. The strategic environmental assessment for the regional programme was consulted, but the JTF intervention under which the hydrological project is planned, is described in rather general terms: the just transition should include measures to improve water relations disrupted by mining activities,⁴³ but contains also a direct reference to the hydrological project, claiming that if implemented in line with the programme provisions it will also

⁴⁰ Marshal Office of the Wielkopolska Region, [Ocena DNSH dla programu Fundusze Europejskie dla Wielkopolski 2021-2027 \(wersja 4.0\)](#), Marshal Office of the Wielkopolska Region, 2022.

⁴¹ Wielkopolska Region Marshall Office, [Prognoza oddziaływania na środowisko projektu programu pt. „Fundusze Europejskie dla Wielkopolski NA LATA 2021-2027. FEW 2021+”](#), Wielkopolska Region Marshall Office, 29 September 2021.

⁴² Ryszard Babiasz, [Analiza zapisów programu 'Zwiększenie retencji i odbudowa zasobów wodnych terenów pogórcicznych na obszarze Wielkopolski wschodniej' w kontekście zapisów dotyczących oddziaływań na środowisko](#), Polish Green Network, CEE Bankwatch Network, 4, July 2024.

⁴³ Wielkopolska Region Marshall Office, [Prognoza oddziaływania na środowisko projektu programu pt. „Fundusze Europejskie dla Wielkopolski NA LATA 2021-2027. FEW 2021+”](#), Wielkopolska Region Marshall Office, 29 September 2021, 34.

have a positive impact on the state of water and water resources, and no significant impact on legally protected areas is expected.⁴⁴

A full DNSH assessment is available for the regional programme, as required by the Commission.⁴⁵

The Commission did not object to the DNSH analysis of the regional programme. However, following an intervention by civil society members of the monitoring committee, in the specific case of the hydrological project it was confirmed that it is not eligible for funding until critical errors regarding the missing SEA are corrected.

Conclusions

1. The current DNSH framework for cohesion policy (especially providing for an assessment only at the level of the programme and types of action) proved ineffective in its ‘positive’ aspect of preventing harmful investments – it did not prevent the project from moving forward and the issue might not have been caught in time if not for the intervention of NGOs, pointing out the lack of an SEA for the project.⁴⁶
2. On the other hand, while the main line of argumentation of experts aiming to prevent this project was the missing SEA, DNSH compliance concerns were a supporting argument. In that sense, the DNSH proved useful in its ‘negative’ perspective of showcasing the potential violation of the horizontal DNSH principle in the particular project proposed, because according to the Commission explanatory note at the implementation stage DNSH compliance is verified by provided EIAs.

⁴⁴ Ibid., 78.

⁴⁵ Wielkopolska Region Marshall Office, [Ocena DNSH dla programu FUNDUSZE EUROPEJSKIE DLA WIELKOPOLSKI 2021-2027 \(wersja 4.0\)](#).

⁴⁶ Although the managing authority responsible for implementing this investments refers to it as a ‘project’, the scope of the planned investments and their possible impact mean it is subject to an SEA procedure.

Conclusions

1. Assessments are often of very low quality and too general to identify potential harmful impacts

The DNSH principle has largely failed to effectively screen environmentally harmful activities in almost all of the cases outlined in this report. This failure stems from poor-quality assessments that do not accurately reflect the full extent of the potential harm during the programming stage.

Examples from Poland, the Czech Republic, Hungary and Latvia all reveal a lack of sufficient evidence to justify that the activities in question will not cause harm to the environment. Specifically, there is a notable absence of data analysis and clearly communicated evidence-based findings supported by ecological studies. The result of these shortcomings, which fundamentally undermine the application of the principle, is that sufficient precautions are not being taken to prevent environmental harm.

Overall, there are significant deficiencies in the application of legislation in relation to the principle, the leveraging of expertise, and the availability of relevant research information. This means that the assessments are being conducted in a sub-optimal way that cannot be considered adequate for preventing environmental harm or justifying positive DNSH assessments.

The European Commission needs sufficient resources to ensure compliance with the DNSH principle. However, the sheer quantity of assessments to be reviewed during the programming and approval stages far exceeds the Commission's current capacities. The Commission must also commit to interventions and enforcement where there is evidence of violations and noncompliance.

In cases where there is a lack of transparency, undue use of fast-track procedures, or weak implementation of the DNSH principle reported by civil society, it is crucial to have prompt intervention and enforcement. This means suspending the disbursement of funding, particularly in cases of higher risk involving the misuse of public funding and environmental harm. Furthermore, the precautionary principle must be applied when screening measures, whereby reforms and investments that are too vaguely defined and lacking specific information, such as locations, should not be approved. This should be accompanied by enough time for programming and spending EU funds and carrying out the relevant environmental and other assessments.

2. The direct impact of measures is not always considered by the assessment

Several of the case studies reveal that activities were approved and financed despite having direct or cumulative harmful impact. Estonia, Poland and Bulgaria all show that the DNSH principle did not sufficiently prevent environmental damage as intended. Projects should be assessed as meaningful, whole projects, including their cumulative and long-term impact, taking into consideration broader factors and implications, rather than relying simply on 'yes' or 'no' answers. A stronger, more diligent approach is therefore needed which should include additional safeguards for investments that are more likely to cause environmental and climate harm. Guidance should include clear requirements to make sure that the assertions by the beneficiary are backed by sufficient justifications.

3. The cohesion policy framework for applying the DNSH principle provides no or very little additional environmental safeguards

The examples of measures financed through Cohesion Policy funds, as seen in the cases from Bulgaria and Poland, demonstrate that the methodology used to apply DNSH intervention is not strong enough to have any meaningful impact, due to the broad level in which it applies and the lack of monitoring mechanisms during implementation. The EC should consider adjusting the current methodology for applying DNSH to cohesion policy, by making sure an assessment can at least take place at the project level, not just the type of action.

4. No or inadequate checks of assessments by national authorities

Our experience shows that while DNSH has been integrated in some cases for the selection of specific projects, its impact on the features of the project remains uncertain. This is because it relies solely on information from the beneficiaries, with no guarantee that the national authority is taking action depending on the quality of such assessment. In our Czech case, the DNSH was taken into account when designing project selection criteria, which is positive, as much as adding a document from the beneficiary about the lack of harm to the environment. But the problem lies to the conditions under which this control is made. Relying on the beneficiary with a self-assessment is not stringent enough to actually make sure any significant harm is prevented. As such it risks being seen as additional paperwork for applicants, without necessarily having the potential to change the content of project. Instead, clear process must be foreseen with specific requirements, including making this assessment public (see issue 7). Beyond or instead of a self-assessment, the national guidance should include a (non-exhaustive) list of evidence for beneficiaries to collect. Institutions should demand to genuinely prove DNSH compliance; as well as should incentivise mechanisms for exchange of practices between different institutions involved in the programming and implementation of funds (managing authorities, intermediary bodies).

5. Insufficient monitoring on the ground

Another aspect is that there is a risk that DNSH might not be impactful because of the timing of the control. Still related to the Czech district heating case, the fact that there will be ex-post control makes it not likely to prevent a potential harm. In contrary, it will only notice the effect of the investment once the damage is already done. Instead, there must be a clear possibility to have early warning or potential changes to the projects (or even its suspension if the risks are too important). Having an ex-post evaluation is useful but relying on it solely makes it too risky to prevent harm. This is why it is important that there is a comprehensive assessment of the measure, and sufficient monitoring of the project along the implementation.

6. Lack of transparency and systematic availability of DNSH assessments

Last but not least, the majority of assessments have not been systematically published and made publicly available, making any additional assessment impossible. In the cases of Latvia and Estonia, information was made available on the national portal for broad measures and later for specific projects responding to calls for proposals.

But experience shows that this is not a unified approach. In the case of Hungary, for example, despite the involvement of non-governmental organisations in the EU funds monitoring committee, no information on integration of the DNSH principle into the call for proposals could be obtained. Only a document on investment strategies containing a brief mention of the DNSH principle was made available to the public.

Under the Recovery and Resilience Facility Regulation, managing authorities are not obliged to divulge information on the DNSH principle, even though it constitutes environmental information and should therefore be publicly disclosed as required under the Aarhus Convention. Failure to disseminate these assessments breaches the Convention and increases mistrust between managing authorities and civil society.



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